

**Bureau of Reclamation
Lower Colorado Region
Freedom of Information Act (FOIA)
Orientation**

References and Links:

FOIA Policy and Guidance <http://www.doi.gov/foia/policy.html>

The Departmental Manual - FOIA Policy and Procedures (FOIA Handbook)
383 DM 15, March 28, 1991 **[No Current WEB Links]**

INTERIOR DEPARTMENT - Title 43-Public Lands: Interior - PART 2-RECORDS AND
TESTIMONY - Subpart A-Freedom of Information Act <http://www.doi.gov/foia/foiaregs.html>

IRM BULLETIN No. 96-04: Processing FOIA Requests for Personal and Personnel-Related
Information <http://www.doi.gov/foia/policy.html>

Reclamation Directive RCD-01-01: Freedom of Information Act (FOIA)
<http://www.usbr.gov/recman/rcd01-01.htm>

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1. What is the FOIA?

It is the chief Federal law (5 U.S.C. 552) on openness in government. It gives any person the right to access FEDERAL agency records, unless exempt. Nine exemptions exist under which requests may be denied.

2. What is a FOIA Request?

A **WRITTEN** letter from the public asking for records, stating the request is made under FOIA or clearly implies the request is made under FOIA by referencing "The Law," "The Statute," "Directive," "Regulation," etc. Elements of a request letter are:

- A. Reasonable description of record.
- B. Letter addressed to appropriate office.
- C. Statement of fee category (see paragraph 9) in which the requester claims the request to fall and the basis for the claim.
- D. Statement of willingness to pay.

3. What is Reclamation's Policy on Disclosure?

Records are released unless exempt under FOIA. Even exempt records are made available to the public when it is determined no governmental interest is jeopardized by their disclosure.

- A. Reclamation will withhold information falling within an exemption only if;
 - (1) Disclosure is prohibited by statute or Executive order, or
 - (2) Sound grounds exist for invoking an exemption.
- B. The exemptions may apply singly or in combination to a given request. If information does not fall under any of the exemptions, there is no basis for withholding. All nonexempt portions of the document must be released.
- C. If it is unclear as to whether specific documents fall under any of the exemptions, consult with your FOIA Coordinator.

4. Who is the FOIA Denial Authority?

Regional Directors may redelegate this authority; however, in the Lower Colorado Region, the Regional Director is our denial authority. Area Managers cannot deny documents under the FOIA.

5. What Information Must Be Included in a Denial Response Letter?

A. Date of Request

B. Description of Records

(1) Requested

(2) Withheld

C. Quote the Exemption

D. State the compelling reason for withholding, i.e., justify the denial; what Government harm will result?

E. List the name and title of the denying official.

F. The requester's appeal rights and time limits to submit an appeal.

G. Notification of charges, if applicable.

(NOTE: See Sample Letters 1 and 2.)

6. How Long Do We Have to Process a FOIA Request?

Even though we now have 20 workdays to process a request, we will endeavor to process requests under the old 10-workday limit. The extra 10 workdays will be used as a buffer. Do not count Saturdays, Sundays, and legal holidays. The 20-workday time limit begins to run when a request is received by the appropriate control office. When it's necessary to forward the request to another installation for a response, the time limit begins upon receipt at the installation in possession of the records. The running of the basic time limit may be delayed under the following conditions:

A. The requester has not stated a willingness to pay fees as high as those anticipated and has not sought and been granted a full fee waiver.

B. The requester has not made a required advance payment.

C. The request needs to be clarified.

The 20 workdays will not begin until the request has been clarified or the records reasonably described and any fee issues resolved.

7. Are Extensions to the time Limits Authorized?

Yes, but only one additional 10-day period under the following unusual circumstances:

- A. The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request;
- B. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- C. The need to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest therein; or
- D. The need to consult with the submitter of the information.

NOTE: The action office will notify the FOIA office when an extension is necessary. The FOIA office prepares a letter to the requester informing them of the reason for the extension (see A-D above) and the anticipated date of the response. The letter to the requester should be sent prior to the expiration of the 20-workday time limit. (See Sample Letter 3)

8. Can We Charge the Requester for Processing a FOIA Request?

We are authorized to charge fees to recover the direct costs of searching for, duplicating and, in the case of commercial-use requesters, reviewing documents to respond to a FOIA request. These fees are only applicable to requests processed under the FOIA or the Privacy Act (duplicating costs only).

9. Are Fees the Same for All Requesters?

No. There are four categories of requesters: commercial-use, educational and noncommercial scientific institutions; news media; and all other. Fees are assessed as follows:

- A. Commercial-use requesters are charged for document search, review, and duplication. They are not entitled to any free search or duplication costs.
- B. Educational/noncommercial scientific institutions and the media are charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies or the equivalent cost thereof if the records are in some other form) of duplication at no cost.
- C. Noncommercial requesters who are not included in A or B, above, are entitled to the first 100 pages (paper copies or the equivalent cost thereof if the records are in some other form) of duplication at no cost and 2 hours of search without charge.

Note: We will not charge the requester if the fee is \$34 or less as the cost of collection would be greater than the fee. The following are provided as examples of how these fees are calculated for the educational/noncommercial scientific institutions and the media categories:

- A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be \$6.50. This amount would be waived.
- A request that results in 750 pages of material. The requester in this case would be charged \$84.50 ($750 - 100 = 650 \times .13 = \84.50).

10. How Much Do We Charge?

The following uniform fee schedule applies to all constituent units of the Department.

A. Review and Search Fees.

Manual searches and reviews by clerical personnel	\$2.30 per quarter hour or fraction thereof.
Manual searches and reviews by professional or managerial personnel in cases where clerical staff would not be able to locate or review the records	\$4.65 per quarter hour or fraction thereof

B. Computerized Records. Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

- (1) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.
- (2) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output remote terminal, storage, plotters, printing, tape/disc mounting, etc. with related associated costs applicable to each operation).
- (3) Material costs (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(4) The ADP facility managers will ensure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, an itemized listing of operations and associated costs for processing the job may be furnished to members of the public.

(5) Requesters entitled to two hours of free search time under 43 CFR 2.20(e) will not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

C. Reproduction Fees.

Pages no larger than 8½ by 14 inches, when reproduced by standard office copying machines	\$0.13 per page
Pages over 8½ by 14 inches	Direct cost of reproduction to DOI
Documents requiring special handling	Direct cost of reproduction to DOI

D. Special Services.

(1) Certification. For each certificate of verification attached to authenticated copies of records furnished to the public the charge will be \$0.25.

(2) Postage/Mailing Costs. Mailing charges may be added for services (such as express mail) that exceed the cost of first class postage.

(3) Other Services. When a response to a request requires services or materials other than those described in this schedule, the direct cost of such service or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

11. What are the Mail Room Responsibilities in Processing a FOIA Request?

A. Stamp all incoming FOIA requests with Official File Copy (OFC) stamp.

B. Place in FOIA routing folder.

C. Hand deliver all requests to the designated FOIA Coordinator

12. What are the FOIA Coordinator Responsibilities?

- A. Log in the FOIA. In the LC Region, we use LC-71 form, "FOI/PA Requests Processing Log."
- B. Assign a control number. For example, RO-, PXAO-, or YAO-9901, 02, etc. Mark the number on the letter in the "stamp" box.
- C. Affix the following stamp on the request letter:

<p>FREEDOM OF INFORMATION ACT REQUEST</p> <p>CONTROL # _____</p> <p>DUE DATE _____</p>
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- D. The due date for reply to the requester is 20 workdays from date of receipt. (The Action Office suspense is 5 workdays from date of receipt which is annotated on the front cover of the Action Office FOIA routing folder (see paragraph J below).
- E. Determine action office and indicate office code on OFC stamp.
- F. Monitor suspenses to ensure time limits are met.
- G. Make a copy of the request after annotating the above information on the original.
- H. Prepare a separate case or dash folder for each FOIA. Keep the original copy in this folder. Also maintain the OFC of the response, a copy of the Bill for Collection (if appropriate), a copy of the requested records (both "redacted" and "unredacted" copies), and any written record of the telephone conversations with the requester or others. **KEEP GOOD RECORDS!**
- I. Place copy of request in FOIA routing folder with a copy of the FOIA exemptions (extract from 383 DM 15), LC-2 "FOIA Request for Records" and LC-4 "FOI Processing Cost Work Sheet."
- J. Fill out routing sheet on front of FOIA routing folder with control number, due date of action office, and the office code of action office. Add additional routing if needed.
- K. Hand deliver FOIA routing folder to action office FOIA Contact.

L. Consult with the designated FOIA attorney in the Field Solicitor's Office as needed and specifically before denying a requested record.

M. Obtain assurances of payment or repayment as necessary and obtain the Bill for Collection from the Finance Office.

N. Prepare response to requester based on the recommendations of the action office (Part II, LC-2). Prepare responses as follows:

(1) Releasable Requests. Prepare response in final form. If fees are due, a statement regarding the fees and the procedures for payment are to be included in the letter. The LC Regional Office Directors (or designated individuals) will sign all Regional Office requests; the Area Manager (or designated individual) signs Area Office requests in the LC Region.

(2) Denials. When all or part of a requested record should be withheld (even if one word is deleted), notify the requester in writing. The letter must contain the items discussed in paragraph 4 above. LC Area Offices prepare the reply in draft form. The Field Solicitor must review the documents and concur on all denial letters. Forward the draft response (along with the request, enclosures, denied records, and any communications/correspondence with the requester) to the Regional FOIA Coordinator (LC-5301), who will prepare the response in final form. The Regional Director signs all denial responses. (See Sample Letters 1 and 2.)

O. Put final response in the FOIA routing folder and route for surnaming, signature, and mailing. (NOTE: By keeping the FOIA in the routing folder during the processing phase, it is easily recognized as needing prompt attention. After the FOIA is closed and all processing actions are complete, the FOIA office consolidates all record copies in the official case file and discards any extra copies used during the processing stage.)

P. When fees are received, record the amount of fees collected on LC-71 and LC-4.

Q. Prepare Annual Report. Bureaus are required to submit a report covering FOIA activities for the preceding fiscal year to the Departmental FOIA Officer. The Region is normally notified by the Denver office as to the reporting requirements and deadline for submission.

13. What are the Action Office Responsibilities?

A. Recommend release or denial of the requested records within the time limits.

B. Ensure an adequate search is conducted and that any records responsive to the request are reviewed properly.

C. Contact the FOIA office before consulting with other offices, the requester, or the Field Solicitor's office. Any contact made needs to be documented for the record.

D. Make sure legible copies of the requested records are made. Even if you are recommending total denial, duplicate one copy for the FOIA case file for record purposes. It will also be used to furnish to the Office of the Solicitor in case of an appeal. On partial denials, mark the portions to be denied with lead pencil. The FOIA office will delete the portions marked after consulting with the Field Solicitor's Office.

E. Complete the following forms:

(1) Part II of Form LC-2 "Freedom of Information Request for Records,"

(2) LC-4 "Freedom of Information Processing Cost Work Sheet." Include the time of all individuals involved in your office in processing the request. Only certain items are chargeable to the requester; however, the other information is required for the Fiscal Year FOIA Report.

F. Place the completed forms and requested records in the FOIA routing folder and hand deliver all information to the FOIA office by the due date reflected on front of the folder.

14. What Happens if We Fail to Comply with the FOIA Rules?

The requester can sue the Department. If an individual is suspected of acting arbitrarily or capriciously with respect to withholding records under the FOIA, the Office of the Special Counsel may conduct an investigation to determine whether disciplinary action is warranted. The Department is obligated to take whatever action the Office recommends in addition to any sanctions the Department decides to impose.

APPENDIX A: FOIA EXEMPTIONS

A. Exemption 1, Classified Information

This exemption allows an agency to withhold information concerning the national defense or foreign policy providing that it has been properly classified under EO 12356, National Security Information (dated April 2, 1982), and any agency regulations implementing the Executive Order.

B. Exemption 2, Internal Administrative Matters

Exemption 2 relates only to the internal personnel rules and practices of an agency. It consists of two distinct categories of records:

(1) Those dealing with internal matters of a relatively trivial nature for which there is no legitimate public interest or benefit (referred to as "low 2"). This exemption is applicable when it would impose an administrative burden on the agency to process the request. Examples include:

- (a) Leave slips and time and attendance sheets;
- (b) Routing slips, surname initials, copy distribution information, and data processing notations;
- (c) Brief references to previous communications; and
- (d) Agency policies and procedures relating to the use of parking facilities, lunch hours, sick and annual leave, etc.

(2) Those of a more substantive nature, the disclosure of which would allow circumvention of a statute or an agency regulation, or impede the effectiveness of the agency's activities (referred to as "high 2"). Examples include:

- (a) Agency procedures, manuals and instructions involving investigatory or security matters, e.g., law enforcement or Inspector General manuals on how to conduct an investigation, audit guidelines, or security techniques; and
- (b) Examination questions and answers; crediting plans used in determining the qualifications of a candidate for employment, advancement, or promotion; and criteria for interviewing prospective employees. Release of this kind of information would give someone an unfair advantage in the job selection process and may require the office to create replacement documents.

C. Exemption 3, Other Federal Statutes

(1) This exemption allows an agency to withhold records that are specifically exempt from disclosure by other Federal statutes. Information may be withheld only if the statute—

(a) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(2) Exemption 3 statutes applicable to DOI include:

(a) Outer Continental Shelf Land Act Amendments of 1978, 43 U.S.C. 1350 through 1352;

(b) Federal Coal Leasing Act Amendments of 1976 (this includes the provisions of the Mineral Leasing Act), 30 U.S.C. 201(b)(3) and 208-1(b) through (e);

(c) National Defense Authorization Act for Fiscal Year 1997, Public Law No. 104-201; Section 821, Prohibition on Release of Contractor Proposals.

(d) Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1257, 1258, and 1262;

(e) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);

(f) National Materials and Minerals Policy, Research and Development Act of 1980, 30 U.S.C. 1604(f);

(g) National Historic Preservation Act Amendments of 1980, 16 U.S.C. 470w-3;

(h) Indian Mineral Development Act of 1982, 25 U.S.C. 2103(c);

(i) Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301;

(j) Indian Gaming Regulatory Act, 25 U.S.C. 2701;

(k) Rule 6(e), Federal Rules of Criminal Procedure (Grand Jury), 18 U.S.C. Appendix;

(l) Juvenile Justice Delinquency and Prevention Act of 1974, as amended, 18 U.S.C. 5038; and

(m) Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3.

(3) The Privacy Act and the Trade Secrets Act are not exemption 3 statutes. Information involving privacy or commercial/financial interests would be considered under exemptions 6, 7(C), and 4, respectively.

(4) Examples of information withheld under exemption 3 include:

(a) Material collected by investigators at the request of the grand jury (Rule 6e);

(b) Witness interviews (Inspector General Act of 1978);

(c) The identity of employee whistleblowers (Inspector General Act of 1978);

(d) The location of caves and artifacts found (Federal Cave Resources Protection Act of 1988);

(e) Information related to archaeological and/or historic resources (Archaeological Resources Protection Act of 1979);

(f) Any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal. Exemption 3 applies to proposals submitted by unsuccessful bidders and only on successful bidders whose proposals are not incorporated or set forth into the contract. When the successful bidder's proposal is set forth or incorporated in the contract, exemption 4 applies, including consultation with the submitter.

D. Exemption 4, Commercial/Financial Information

(1) Exemption 4 protects trade secrets and commercial or financial information obtained from a person which is privileged or confidential. This exemption is intended to protect both the interests of commercial entities that submit proprietary information to the Government and the interests of the Government in receiving continued access to such data. If the information is generally available to the public or would be made available if requested from the submitter, then exemption 4 protection has been waived.

(2) The following criteria will be used to determine whether exemption 4 is applicable:

(a) Trade Secret. Does it involve a trade secret (a formula, plan, process, or device used to make, prepare, or process a commodity)? There must be a direct relationship between the trade secret and the productive process.

(b) Commercial or Financial Information.

1) Do the records contain commercial or financial information?

2) Was the information obtained from a person? A person may be a corporation, association, or public or private organization--anyone other than an agency of the Federal Government (including Indian tribes).

3) Is it privileged or confidential? Commercial or financial information is determined to be confidential if its disclosure would be likely to:

a) Impair the Government's ability to obtain necessary information in the future. The agency must be able to demonstrate that the information was provided voluntarily and that the submitter would not have provided it if the submitter had believed that the material would be subject to disclosure;

b) Cause substantial competitive harm to the person/business from whom the information was obtained. If no competition exists (i.e., the company is the sole producer of a given product), then the information cannot be withheld under the premise that release would cause competitive harm; or

c) Harm other protected interests which are not encompassed by a) or b), above. For example, see *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770, n. 17 (D.C. Cir. 1974); and *Critical Mass Energy Project v. NRC*, 830 F.2d 278 (D.C. Cir. 1987).

(3) Government documents may be protected under exemption 4 if they contain summaries or reformulations of information supplied by an outside source.

(4) In accordance with EO 12600, Predisclosure Notification Procedures for Confidential Commercial Information (dated June 23, 1987), and 43 CFR 2.15(d), bureaus will notify submitters when their data is requested under the FOIA to determine if the material is confidential and exempt from disclosure (see sample letter).

(5) Bureaus must maintain adequate records to support their decision to disclose commercial or financial information in case a reverse FOIA suit is filed.

(6) Examples of information withheld under exemption 4 include:

(a) Commercial or financial information received in confidence in connection with bids, contracts, or proposals (*use Exemption 3 for unsuccessful bidders and successful bidders whose proposals are not incorporated or set forth into the contract*):

- 1) Assets, income, profits, losses, and expenditures;
- 2) Names of consultants, subcontractors, and suppliers; performance, cost, and equipment information;
- 3) Labor costs, profit margins, and competitive vulnerability;
- 4) Business sales statistics, research data, and technical designs;
- 5) Financial statements and balance sheets;
- 6) Technical proposals in whole or in part;
- 7) Price negotiation memos;
- 8) Names of customers and amounts and discounts offered to them;
- 9) Resumes and other employee-related information such as what the company pays its employees;
- 10) A company's internal organization chart;
- 11) Letters of reference from private sector clients;
- 12) Approach and methodology for accomplishing work set forth in the solicitation; and
- 13) Plant facility reports.

(b) Personal statements given in the course of an inspection, investigation, or audit, when such statements are received in confidence from the individual and retained in confidence because they meet the criteria in D(2), above.

(c) Scientific and manufacturing process or developments containing technical or scientific data submitted with an application or report while research is in progress.

(d) Solid mineral information, including production data and royalty statistics.

(e) Geophysical information--location of oil and gas wells, drilling plans, exploration data, geologic reports, maps, etc.

(f) Financial information maintained on Indian tribes. (For the purposes of FOIA, Indians are considered persons outside the Government, as defined in D(2)(b)2), above.)

Note: If the information is not sensitive, i.e., it is published in the company's annual report or is available through the Securities and Exchange Commission, exemption 4 may not be invoked to protect it.

E. Exemption 5, Privileged Information

(1) Exemption 5 is designed to protect those interagency and intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency (i.e., those records which would not be made available routinely through the discovery process--the means by which the parties involved in a lawsuit exchange information prior to a hearing or trial).

(a) This exemption applies to inter- or intra-agency records--records that are transmitted within or among DOI components, or between Federal agencies.

(b) In some circumstance, it may also apply to documents generated or transmitted outside of an agency. It includes documents prepared by outside consultants at the request of the agency and recommendations or advice from Congress or another Federal agency. It may be possible, in certain circumstances, to protect communications between Federal and State agencies. However, this should be done only after consultation with the designated FOIA attorney.

(2) Four of the privileges commonly invoked under exemption 5 are discussed below.

(a) Deliberative Process Privilege.

1) This privilege is designed to protect the quality of the agency's decision making process, i.e.:

a) To encourage candid and frank discussions among agency officials;

b) To protect against premature disclosure of proposed policies before they are finally adopted; and

c) To avoid public confusion that might be caused by disclosing reasons and rationales that were not ultimately the basis for an agency's action.

2) In order to use this privilege, the material must be predecisional and part of the decisionmaking process in that it includes opinions, recommendations, or deliberations on legal or policy matters. Generally, protected information is analytical and subjective rather than factual. In determining whether a document is predecisional, consider the following:

- a) The document's language and its place in the decisionmaking process. Predecisional, deliberative process documents are written prior to the agency's final decision and usually contain recommendations or opinions, or represent the agency's tentative position on an issue. They typically discuss the pros and cons of the adoption of one viewpoint over another.
- b) The decisionmaking authority of the person issuing the document.
- c) The direction in which the document flows in the decision making chain. Documents written by a subordinate and transmitted to a superior are more likely to be predecisional than those written by a person who is in a position to make the final decision for the agency.

3) The deliberative process privilege generally may not be used to withhold purely factual material or the factual portions of deliberative documents. The factual portion must be released where it can be segregated from the remainder of the document. However, if the manner of selecting or presenting those facts would reveal the deliberative process or if the facts are inextricably intertwined with the decisionmaking process, the facts may be withheld.

4) Drafts of documents are commonly exempt under the deliberative process privilege. They must be part of the decisionmaking chain and are usually prepared prior to the adoption of a final agency position. Drafts are reflective of the give and take of the review process that leads to a decision -- agency officials need to be able to talk and discuss issues freely. Labeling a document "Draft" does not in itself protect the material.

5) The deliberative process privilege may be used to protect a draft regardless of whether it differs from the final version providing the agency is able to show that it is part of the decisionmaking process and describes the role that the document plays in that process. The only exception is if an agency cites a draft document as binding precedent, adopts it as working agency law, or incorporates it by reference in a final agency decision. If several recommendations are presented in a draft and only one is adopted, the others may be withheld under exemption 5.

6) Final and postdecisional documents which discuss, analyze, or explain established policies and decisions may not be withheld under this privilege.

(b) Attorney Work-Product Privilege. This privilege protects documents and other memoranda prepared by an agency attorney in anticipation of litigation, including administrative proceedings. It covers all documents prepared by an attorney or under his/her supervision, such as reports prepared by a consultant or a program employee. Litigation need not have started but it must be reasonably contemplated, i.e., a specific claim must exist that is likely to lead to litigation. The privilege still applies after a case has ended or even if it never was begun, as long as it was reasonably contemplated. Attorney work-product documents may be withheld in their entirety.

(c) Attorney-Client Privilege. This privilege applies to confidential communications between an attorney and his/her client, usually an agency employee, relating to a legal matter for which the client has sought professional advice. The privilege is designed to protect the client. Unlike the attorney work-product privilege, the use of the attorney-client privilege is not limited to instances where litigation is expected. However, the information shared between the attorney and client must be confidential. If it is shared with persons outside the attorney-client relationship, exemption 5 may no longer be used to protect the information.

(d) Government Commercial Information Privilege. This privilege is available to the Government for information that it generates in the course of its business dealings, such as the process leading up to the award of a contract, or for appraisal information associated with the acquisition of real property. The premise is that premature release of such information would put the Government at a competitive disadvantage. However, once the contract has been awarded, property acquired, or the offer withdrawn, the privilege expires. The privilege applies to trade secrets or other confidential research, development, or commercial information.

(3) Examples of materials covered by exemption 5 include:

(a) Advisory opinions, recommendations, and deliberations which are part of the decision making process;

(b) Draft documents regardless of whether they differ from the final version;

- (c) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to a private entity in its dealings with the Government, or would impede the activities of the agency;
- (d) Ratings given to job applicants by panel members and the names of panel members (ratings may be released if doing so will not reveal the identities of the panel members; the identities of panel members may be released if doing so will not reveal the ratings they gave);
- (e) Financial formulas used to determine the financial capability of a contractor;
- (f) Appraisals generated by the Government or on its behalf;
- (g) Advisory material in documents prepared on behalf of the agency by consultants;
- (h) Cost estimates, technical ratings and evaluations, and recommendations for award prepared by the Government;
- (i) Preaward and market surveys;
- (j) Facts divulged by a client to his/her attorney in confidence and opinions given by an attorney to his/her client based upon those facts;
- (k) Information gathered by agency investigators under the direction of agency attorneys (work-product);
- (l) Memoranda that advise an agency of the types of legal challenges it may face in light of a proposed program, potential defenses available to the agency and the likely outcome;
- (m) Documents relating to possible settlements of litigation;
- (n) The nonfactual portions of predecisional staff papers, containing staff evaluations, advice, opinions, or suggestions;
- (o) Records that are exchanged among agency personnel or with other agencies in preparing for litigation or an administrative proceeding; and

- (p) Recommendations contained in official reports of inspection, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one of DOI's components.

F. Exemption 6, Personal Privacy

This exemption permits the withholding of all information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

- (1) To warrant protection, the information must fall within the category of personnel, medical, and similar files. The term "similar files" applies to any file or document which pertains to a specifically identifiable individual and contains information that is personal.

- (a) Examples of "similar files" include:

- 1) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be, or has been taken;
- 2) Aircraft and personal injury report files;
- 3) Files containing information related to permits, applications, and licenses; and
- 4) Reports of investigation.

- (b) Records concerning a business or association may not be withheld under exemption 6. However, where the business is owned and operated by an individual and the records of the business are in essence the records of the individual, the exemption may apply.

- (2) The next step is to determine whether a privacy interest exists. Would disclosure of the information to the public violate the privacy of the subject of the information? Could it cause injury or embarrassment to the individual?

- (3) In accordance with the March 1989 Supreme Court decision in *Reporters Committee for Freedom of the Press v. Department of Justice* (109 S. Ct. 1468 (1989)), the following steps should be followed in making decisions under exemptions 6 and 7(C):

(a) Determine whether a personal privacy interest is involved. There must be a privacy interest in the requested information for any further consideration of privacy-exemption protection to be appropriate. To qualify, the information must involve the privacy interest of an identifiable, living person (see (5), below). If a personal privacy interest does not exist, then exemptions 6 and 7 (C) do not apply.

(b) Determine whether a public interest is involved. Consider how disclosure would benefit the general public, but only in light of the content and context of the requested document. The requester's particular purpose, circumstances, and proposed use should no longer be taken into account, except to the extent that it may coincide with an identifiable public interest. If disclosure to the general public would not serve a public interest, then any identified privacy interest should be protected under the applicable exemption.

(c) Determine whether the identified public interests qualifies for balancing. Would disclosure of the information shed light on the agency's performance of its statutory duties? Information that reveals little or nothing about the operations or activities of the Government does not meet the new public interest standard, and as such, should be protected.

(d) Balance the personal privacy interest against the public interest. If it is determined that a public interest qualifying under the Reporters Committee standard is present, then that interest should be balanced against the personal privacy interest--the benefit to the public must be weighed against the potential harm to an individual's personal privacy. If the privacy interest is greater, then the information should be protected; if the public interest is greater, then the material should be released.

1) Some information, such as the "rap sheets" in Reporters Committee, may be appropriate for "categorical withholding." It may be determined that a certain type of information is always protectable under exemption 7(C) without regard to individual circumstances.

2) A privacy interest may still exist even though the personal information has been made available to the general public at some place and point in time. In such situations, the designated FOIA attorney should be consulted.

3) A requester's particular knowledge of the information in question should not be considered in deciding FOIA requests. For example, an agency should not disclose information to the spouse or relative of the subject individual that they would normally withhold from any member of the general public.

4) Exemption 6 material may be released with the prior written consent of the individual (subject of the record).

5) The fact that disclosure of certain information about a particular individual to the media might provide some public interest does not in and of itself meet the test if it reveals nothing about the programs or activities of the agency.

(4) In accordance with Reporters Committee, the identity of an FOIA requester cannot be taken into consideration in determining what should be released. An exception to this rule is that a bureau may not invoke exemption 6 or 7(C) where the privacy interest to be protected is the requester's. For example, if a requester asks for a copy of a study or report--a record not covered by the Privacy Act--and it contains his/her home address, the bureau cannot withhold the information from the requester. Normally these exemptions cannot be used to withhold information from a requester that he/she would be entitled to under the Privacy Act (information about himself/herself).

(5) Exemptions 6 and 7(C) may not be used to protect the privacy of a deceased person; however, in some cases, they may be exercised to protect the family of the deceased.

(6) After the personal identifying information has been deleted, all reasonably segregable, nonexempt portions of the requested records must be released.

(7) Examples of personal/personnel-related information generally withheld under exemption 6 of the FOIA include:

(a) Personal identifying information such as:

- home address and telephone number;
- social security number;
- age, place and date of birth;
- other names used;
- marital status;
- race and/or ethnic background;
- an individual's party or union affiliation;
- technical education--not related to the position held (see (8)(i), below);

- work experience--not related to the professional qualifications for the position held (see (8)(k) and (l), below);
 - whether an employer may be contacted regarding an individual's work record;
 - availability for employment;
 - details of health and insurance benefits;
 - allegations of misconduct or arrests;
 - information concerning or provided by relatives and references;
 - other background information which is not work related; and
 - tribal affiliation, degree of Indian blood ("quantum"), lineal heritage/history.
- (b) Payroll information--number of deductions and the amounts, fringe benefit payments, number of withholding exemptions and net wages.
- (c) Financial information such as an individual's credit rating, personal credit card numbers, business credit card numbers, credit card statements.
- (d) Personal cellular telephone and beeper numbers of private individuals; official cellular telephone and beeper numbers of security/special contact personnel (exemptions "high" 2 and 7, also possible).
- (e) PIN (personal identification number).
- (f) Names of dues paying members of the bargaining unit (see (8)(aa), below).
- (g) Names of individuals who applied for the buyout, but did not receive it (see (8)(dd), below).
- (h) Performance appraisals including any narrative material.
- (i) Supervisory notes on an employee's performance.
- (j) Time and attendance records (the amount of sick or annual leave, leave without pay (LWOP), absent without leave (AWOL) and other personal information (see (8)(cc), below).

- (k) SF-171's of unsuccessful applicants for employment including their identities, qualifications, and any narrative material (see (8)(t), below).
- (l) The knowledge, skills, abilities and personal characteristics of unsuccessful applicants.
- (m) Supervisory evaluation of a candidate for a particular position and assessment of professional conduct, ability, etc.
- (n) Referral lists of qualified candidates and the roster of applicants for a particular position, except for the successful candidate.
- (o) Reasons for job termination.
- (p) Employee grievance and response to grievance.
- (q) Records regarding the outcome of an investigation of employee conduct (where wrongdoing by high-level Government official is shown, the result may be different).
- (r) Letters of reprimand and suspension notices.
- (s) EEO investigative case file (exemptions 7C, 7A, and 5, also may apply).
- (t) Results of a complaint by an employee against his/her supervisor (where wrongdoing is shown, the result may be different).
- (u) Arbitration decision on an employee grievance (where a particular employee's decision is requested).
- (v) Employee's resignation letter.
- (w) Mailing lists that contain personal information (names, home addresses, and telephone numbers of individuals as opposed to businesses and other organizations) where the release would not shed light on the operations or activities of the Government.
- (x) Records concerning an employee's medical condition, history, and health test results.
- (y) Membership in organizations other than those related to employee's profession (see (8)(f), below).

(z) Information pertaining to eligibility for 5- or 10-point veteran's preference.

(aa) Information pertaining to whether an individual received an honorable or dishonorable discharge from military service.

(bb) Tribal census and membership rolls.

(cc) Names and home addresses of Privacy Act requesters and home addresses of FOIA requesters (see (8)(gg), below). (NOTE: Names of FOIA requesters are releasable as they do not ordinarily expect that their names will be kept private; therefore, release would not cause even a minimal invasion of their personal privacy.)

(dd) Ratings given to job applicants by panel members and the names of the panel members (ratings may be released if doing so will not reveal the identities of the panel members; the identities of the panel members may be released if doing so will not reveal the ratings they gave)--exemption 5 may also be used to protect this information.

(8) Examples of personal/personnel-related information generally releasable under the FOIA:

(a) Names of present and former employees.

(b) Present and past position titles and occupational series.

(c) Present and past grades.

(d) Present and past annual salary rates--including amounts received for performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials (normally, the name of the individual, position, type of award (performance, incentive, meritorious or distinguished service) and the dollar amount are releasable).

(e) Other awards and honors received in an individual's professional capacity, including justification for all awards and honors except for information protected under exemption 6.

(f) Membership in organizations related to employee's profession (see (7)(y), above).

(g) Present and past duty stations (this includes official mailing and E-mail addresses of DOI employees); as well as official telephone numbers as they appear in the DOI Telephone Directory.

- (h) Position descriptions, identification of job elements and those performance standards (but not actual performance appraisals) the release of which would not interfere with law enforcement programs or inhibit agency effectiveness. Performance elements and standards may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.
- (i) Educational background--high school, college/ graduate school; technical education related to the employee's (or successful applicant's) profession and/or position (see (7)(a), above).
- (j) Special skills, accomplishments, and awards related to the employee's (or successful applicant's) profession and/or position.
- (k) Past Federal/State/local government employment and salary including reason for leaving except when protected under exemption 6 (see (7)(a), above).
- (l) All other prior employment related to position held including reason for leaving except when protected under exemption 6 (redact salary, name and telephone number of supervisor) (see (7)(a), above).
- (m) Type of job applying for.
- (n) Sex.
- (o) Citizenship.
- (p) Information pertaining to military service and veteran preference, e.g., fact that an individual served, military service number, dates and branch for all active military service, rank, medals, badges or awards received, fact of veteran preference (see (7)(z) and (aa), above).
- (q) Recommendation for promotion, reassignment, appointment, etc., after action occurs except for information protected under exemption 6.
- (r) Letters of appreciation and commendation from professional associates.
- (s) Standard payroll forms (sanitized of any personal information).

- (t) SF 171, Application for Federal Employment, and other job application forms for the successful candidate or the incumbent (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a) and (7)(k), above, regarding the SF-171's of unsuccessful applicants).
- (u) SF 50, Notification of Personnel Action (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).
- (v) SF 52, Request for Personnel Action (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).
- (w) Verification of Indian Preference for Employment (Form S-4432) and Certificate of Indian Blood for successful applicant or incumbent (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).
- (x) Factors used in ranking job applicants (not to be confused with a crediting plan cited under exemption "high" 2).
- (y) Name of the selecting official.
- (z) Panel ratings and scores of the successful job candidate (names of raters should be protected) (see (7)(dd),above).
- (aa) Members of the bargaining unit--names of all members (see (7)(f), above).
- (bb) Names of Federal employees involved in union activities during working hours.
- (cc) Number of hours worked, including overtime, and total number of hours of leave taken (see (7)(j),above).
- (dd) Names of individuals who applied for and received the buyout and have separated from the agency (see (7)(g), above).
- (ee) Service computation date and information related to tenure.
- (ff) Information about deceased persons unless exemption 6 is applicable (see the FOIA Handbook, Chapter 5.4F(5)).
- (gg) Names of FOIA requesters except when they are making first party requests (see (7)(cc), above). (NOTE: Personal information about the requesters, however, such as home addresses and telephone numbers should not be disclosed.)

G. Exemption 7, Law Enforcement Information

Exemption 7 protects records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information--

- (1) Could reasonably be expected to interfere with enforcement proceedings; (*Examples--investigative files, criminal, civil or administrative actions pending, background security investigations, affidavits, and audit reports where an investigation is involved*)
- (2) Would deprive a person of a right to a fair or an impartial adjudication; (*Examples--a report which may result in a disciplinary action involving a Department employee*)
- (3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; (see F(3), above); (*Examples--names of special agents, informants, witnesses, interviewees, and "rap sheets"*)
- (4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (*Examples--any information which might identify a confidential source such as interviews, affidavits, or another witness' reference to the source*)
- (5) Would disclose guidelines, techniques, and procedures for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or (*Examples--certain portions of the Inspector General's manual, information on interviewing techniques, and conducting surveillances and investigations*)
- (6) Could reasonably be expected to endanger the life or physical safety of any individual.

Note: Under certain circumstances, records concerning pending investigations and informants may be considered as outside the scope of the FOIA (5 U.S.C. 552(c)(1) and (2)). These exclusions are discussed in the DOJ FOIA Case List. In such instances, the designated FOIA attorney should be consulted.

H. Exemption 8, Bank Records

Exemption 8 covers matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions such as the Federal Reserve Board or the Office of the Comptroller of the Currency.

It generally does not apply to records in DOI's possession. Examples of documents withheld are:

- (1) Bank examination reports -- those evaluating a bank's stability, its financial condition and operations, and
- (2) Reports examining a bank's compliance with consumer laws and regulations.

I. Exemption 9, Well Information

This exemption pertains to geological and geophysical information and data (including maps) concerning wells. Exemption 9 has been invoked to withhold well logs and maps, seismic reports, and other exploratory findings of oil companies.

NOTE: Although the examples cited above are normally exempt from disclosure, either in whole or in part, documents should be reviewed on a case-by-case basis. Depending on how current the information is, whether an action is pending or has been completed, and other related circumstances, release may be appropriate. If it is unclear as to whether a particular exemption applies, consult the Office of the Solicitor.

IMPORTANT: In accordance with the Attorney General's Memorandum of October 4, 1993:

It shall be the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption. Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be.

Thus, even when it is determined that information satisfies the legal criteria for withholding under a specific FOIA exemption, **it should nevertheless be released whenever disclosure would not "be harmful to an interest protected by that exemption."**

APPENDIX B: Sample FOIA Response Letters

SAMPLE LETTER 1 FOIA DENIAL

LC-5301
RIM-6.11
(RO-9901)

Mr. John Doe
1234 Main Street
Anytown USA 00000

Subject: Freedom of Information Act (FOIA) Request for Copies of Documents Relating to
T

Dear Mr. Doe:

This responds to your letter of T, in which you requested the subject documents. We have examined the files under our jurisdiction carefully, and are enclosing most of the information you requested.

Select one of the paragraphs below:

{ Certain documents (**identify specific material or records withheld**), however, are being withheld because they reflect the Dpersonal opinions, recommendations, and advise of staff members, and were to arrive at a final agency decision. Disclosure of such material would inhibit the open and candid expression of such views in similar future deliberations, could confuse the public as to the official agency position on an issue, and have a detrimental effect on our decision-making process. Therefore, sound grounds exist for withholding the Nmaterials pursuant to exemption 5 of the FOIA [5 U.S.C. 552(b)(5)] which permits an agency to withhold "Interagency or intra-agency memorandums or letters that would not be available by law to a party . . . in litigation with the agency." }

{ The documents you requested are enclosed, however, the home Daddresses, telephone numbers, and social security numbers of the employees have been deleted. The Department of the Interior maintains that an individual has a personal privacy interest in this information. We do not perceive, nor have you enunciated, any public interest that would be served in disclosing this data which would outweigh the privacy interest of the subject individuals. Therefore, sound grounds exist for withholding the information pursuant to exemption 6 of the FOIA [5 U.S.C. N552(b)(6)] which permits an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy."}

Ø In addition to myself, the officials responsible for this partial denial are **(name(s), title(s), and organization(s) of official(s))**. **(The names of any individuals consulted in the review process may also be included.)**

Under 43 CFR 2.18, you may appeal this partial denial to:

Ø

Freedom of Information Act Appeals Officer
Office of Information Resources Management
US Department of the Interior
MS-5312, MIB
1849 C Street NW
Washington DC 20240-0001

Your appeal must be in writing and received no later than 20 workdays after the date of this letter or 20 workdays after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

Ø A Bill for Collection is enclosed (**Enclosure ____**) to cover the cost of processing this request. A cost breakdown is shown on the Bill for Collection. Payment options include VISA, Mastercard, check or money order. Please follow the instructions on the Bill for Collection to ensure proper credit of your payment. Assessments will be applied in accordance with the Debt Collection Act of 1982 (31 U.S.C. 3717) implementing regulations (4 CFR 102.13) if the fee is not paid by the due date reflected on the Bill for Collection.

Ø If you have any questions, please call **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

Regional Director

Enclosures

- (1) Description of requested records*
- (2) Date of request*
- (3) Sound grounds (expound)*
- (4) Denial authority*
- (5) Denial officials*
- (6) Appeal procedure*
- (7) Fees*
- (8) Contact*
- (9) Date letter received (Include if request is delayed)*

SAMPLE LETTER 2
FEE WAIVER DENIAL

LC-5301
RIM-6.11
(RO-9902)

Mr. Jerry Cook
Silva, Cook, and Grant
Attorneys at Law
One Maryland Street
Baltimore MD 21212

Subject: Freedom of Information Act (FOIA) Request Concerning Certain Records Relating to
(subject of request)

Dear Mr. Cook:

This responds to your FOIA request of **(insert date of letter)**, in which you seek access to the subject records.

In your letter you also sought a fee waiver since the information was being requested in connection with an action pending in the Superior Court of the State of Maryland entitled Norwood v. Glowmino Corp. The Department of the Interior's regulations state that "... documents shall be furnished without charge ... if disclosure of the information is in the public interest because it (1) is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) is not primarily in the commercial interest of the requester." Your request did not contain sufficient evidence to support these criteria. Therefore, we are denying your request for a waiver pursuant to 43 CFR 2.21(a).

As Regional Director, I am responsible for this denial. **(name)**, Attorney, Office of the Field Solicitor, was consulted with respect to this denial.

Under 43 CFR 2.18, you have the right to appeal this decision to:

Freedom of Information Act Appeals Officer
Office of Information Resources Management
US Department of the Interior
MS-5312, MIB
1849 C Street NW
Washington DC 20240-0001

Your appeal must be in writing and must be received no later than 20 workdays from the date of this letter. The appeal must be accompanied by a copy of your original request and this denial letter. To expedite the appellate process and to ensure full consideration of your appeal, your letter should contain a brief statement of the reasons why you believe this decision is in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

We estimate that it will cost **\$00.00** to search for and review the requested records and **\$00.00** to duplicate the material (**000 pages at \$.13 per page**) for a total of **\$000.00**. If you still wish to obtain these documents, please provide written assurance of your willingness to pay the full amount to (name and address of FOIA Coordinator). You may wish to modify your request at this time to reduce the fee. We will not start processing your request until this written assurance has been received.

If you have any questions concerning this matter, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

Regional Director

SAMPLE LETTER 3
EXTENSION OF 10-DAY TIME LIMIT

LC-5301
RIM-6.10
(RO-9903)

Mr. Tom Jones
XYZ Company
1234 Holly Lane
Bethesda MD 20814

Subject: Freedom of Information Act (FOIA) Request for Copies of All Records Concerning
Contract Number 00000000

Dear Mr. Jones:

This acknowledges your FOIA request of **(date of request)**. We are taking a 10-day extension under 43 CFR 2.17(c) in order to properly process your request **(insert one of the reasons below)**.

{Due to the need to search for, collect, and examine **voluminous records**.}

{Due to the need to search for and collect the requested records from another source.}

{Due to the need to consult with another agency or other components in the Department.}

A final reply will be sent to you on or before **(indicate 20 workdays from date of receipt)**.

If you have any questions concerning this letter, please contact **(insert name, title, and telephone number of FOIA contact)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager or Designee)

SAMPLE LETTER 4
ASSURANCE OF PAYMENT

LC-5301
RIM-6.10
(RO-9904)

Mr. J. R. Jones
Consultant
J. R. Jones Company
2200 Maryland Road
Baltimore MD 21210

Subject: Freedom of Information Act (FOIA) Request for a Copy of the Department of the Interior's Contract with B and B, Inc.

Dear Mr. Jones:

This letter is in response to your FOIA request of **(date of request)**.

The estimated fee for the documents you have requested is \$148.60, calculated as follows: 1,000 pages of duplication at \$.13 per page and 1 hour of search and review time at \$18.60 per hour. Prepayment is not requested at this time, however, please furnish written assurance of your willingness to pay the full amount for the documents to **(insert name and address of FOIA Coordinator)**. You may wish to modify your request to reduce the fee at this time. We will not start processing your request until this written assurance has been received.

If you have any questions, please contact **(name, title, and telephone number of the FOIA contact)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 5
ADVANCE PAYMENT - DELINQUENT REQUESTER

LC-5301
RIM-6.10
(RO-9905)

Mr. John Doe
Doe & Doe
107 Town Road
Arlington VA 22211

Subject: Freedom of Information Act (FOIA) Request for Copies of Records Concerning Bureau
of Reclamation Fish Hatchery

Dear Mr. Doe:

We are in receipt of your FOIA request dated **(date of request)**, regarding the subject records. We estimate the fees to process your request will be \$167.20; \$130 for duplication (1,000 pages at \$.13 per page) and \$37.20 to search for and review the requested records (2 hours at \$18.60 per hour). Moreover, our records show that you owe a balance of \$85 on a previous request. Under the Department of the Interior's regulations [43 CFR 2.20(h)(2)], we will not begin processing your present request until these fees are paid in full **(a total of \$252.20)**.

Please send a check or money order made payable to the Bureau of Reclamation **(name of office)** to **(address where payment is to be mailed)** or let us know if the \$85 has been paid. In the meantime, your request will be held until this matter is resolved.

If you have any questions, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 6
CLARIFYING A VAGUE OR OVERLY BROAD REQUEST

LC-5301
RIM-6.10
(RO-9906)

Ms. Noel Claus
123 Candycane Lane
Snowtown AK 01010

Subject: Freedom of Information Act (FOIA) Request for Records Regarding
(subject)

Dear Ms. Claus:

This letter is in response to your FOIA request of **(date of request)**, for the subject records.

Because of the broad and general nature of the subject of your request, we are unable to identify which records are being sought. Under our regulations (43 CFR 2.14(b)(2)), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request does not meet this requirement.

Please be more specific concerning the type of documents you are requesting within each program area or relative to each project. In addition, if such information is available, the request should include the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and time frame for which you are seeking records have not been defined. It is unclear whether your request covers only records in the Lower Colorado Region or in other Bureau of Reclamation Regions as well.

We will not proceed further with your request until we receive additional clarification from you. If you have any questions, please contact **(name, title and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 7
RECORDS DO NOT EXIST

LC-5301
RIM-6.10
(RO-9907)

Ms. Ella Cution
A & M Realtors
1316 Madison Street
Olney MD 20832

Subject: Freedom of Information Act (FOIA) Request Seeking Access to an Inventory of
Government Commercial Activities for the State of Arizona

Dear Ms. Cution:

This letter is in response to your FOIA request of **(date of request)**, in which you requested access to subject records. The Bureau of Reclamation does not maintain a listing of A-76 activities by State or geographical area, but rather by type of commercial activity.

Under 43 CFR 2.14(c), the Department of the Interior is not required to create or compile a record to respond to an FOIA request. The Act applies only to records in existence at the time the request is made.

You may appeal this response, in accordance with 43 CFR 2.18, by writing to:

Freedom of Information Act Appeals Officer
Office of Information Resources Management
US Department of the Interior
MS-5312, MIB
1849 C Street NW
Washington DC 20240-0001

Your appeal must be received no later than 20 workdays after the date of this letter. Both the envelope and the letter should be marked "FREEDOM OF INFORMATION APPEAL." A copy of your original request and this letter should accompany your appeal, along with any information you have which leads you to believe the records do exist, including where they might be found, if the location is known to you.

If you have any questions, please contact **(name, title, and telephone number of FOIA coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 8
RECORDS CANNOT BE LOCATED

LC-5301
RIM-6.10
(RO-9908)

Ms. Shanda Lear
1707 88th Street
New York NY 10128

Subject: Freedom of Information Act (FOIA) Request Seeking Access to Two Letters
Concerning Delinquent FOIA Requesters

Dear Ms. Lear:

This letter is in response to your FOIA request of April 15, 1989, in which you seek access to two letters (dated November 3, and 10, 1988) from the Departmental FOIA Officer, Department of the Interior, to the Department of Justice, concerning delinquent FOIA requesters.

We have reviewed our files and were unable to locate any records responsive to your request.

Under 43 CFR 2.18, you may appeal this response by writing to:

Freedom of Information Act Appeals Officer
Office of Information Resources Management
US Department of the Interior
MS-5312, MIB
1849 C Street NW
Washington DC 20240-0001

Your appeal must be received no later than 20 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you.

If you have any questions, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 9
REFERRAL TO ANOTHER AGENCY
(LETTER TO AGENCY)

LC-5301
RIM-6.10
(RO-9909)

Ms. Barbara Goss
FOIA Coordinator
Room 400
Administration Building
Department of Agriculture
Washington DC 20250

Subject: Freedom of Information Act (FOIA) Request for Records Concerning
(title of records)

Dear Ms. Goss:

Enclosed is a FOIA request from Mary Allen that you may be able to answer. We have advised Ms. Allen that she will receive a response directly from your office. A copy of our response is also enclosed.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

Enclosures

SAMPLE LETTER 10
REFERRAL TO ANOTHER AGENCY
(LETTER TO REQUESTER)

LC-5301
RIM-6.10
(RO-9910)

Ms. Mary Allen
P.O. Box 7775
Andrews NC 28901

Subject: Freedom of Information Act (FOIA) Request for Records Concerning
(subject of records)

Dear Ms. Allen:

It has been determined that the records described in your **(date)** FOIA request may be located in the Department of Agriculture. Therefore, we have forwarded your request to that agency which will provide you with a direct response. If there is a need for you to contact the Department, the mailing address is:

Ms. Barbara Goss
FOIA Coordinator
Administration Building
Department of Agriculture
Washington DC 20250
202-123-4567

If you have any questions, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 11
REFERRAL TO ANOTHER BUREAU

LC-5301
RIM-6.10
(RO-9911)

Mr. Mitch Demiens
President
Indian Conference, Inc.
1709 Second Avenue
Fairbanks AK 99701-4897

Subject: Freedom of Information Act (FOIA) Request Seeking Access to Records Concerning
the Indian Child Welfare Act Program

Dear Mr. Demiens:

This letter is in response to your FOIA request of **(date)**, in which you seek access to the subject records. We have forwarded your request to the Bureau of Indian Affairs which will provide you with a direct response. If there is a need for you to contact the Bureau, the mailing address is:

FOIA Coordinator
Bureau of Indian Affairs (BIA)
MS-337, SIB
Washington DC 20245
202-208-3555

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

cc: Casey Jones (BIA)

SAMPLE LETTER 12
REFERRAL OF RECORDS (TO ANOTHER AGENCY)

LC-5301
RIM-6.10
(RO-9912)

Ms. Barbara Goss
FOIA Coordinator
Administration Building
Department of Agriculture
Washington DC 20250

Subject: Freedom of Information Act (FOIA) Request for Records Concerning
(title of records)

Dear Ms. Goss:

While processing a FOIA from Mary Allen, dated **(date of letter)**, we located three documents that originated in your agency (see the enclosed). We have advised Ms. Allen that she will receive a direct response from your office. A copy of our response is also enclosed.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

Enclosures

SAMPLE LETTER 13
RECORDS NOT AVAILABLE AT THIS TIME

LC-5301
RIM-6.10
(RO-9913)

Mr. Joe Blow
555 Market Street
Anytown USA 00000

Subject: Freedom of Information Act (FOIA) Request Regarding
(subject of records)

Dear Mr. Blow:

This is in response to your FOIA request of **(date of request)**, regarding the subject records.

The documents you requested do not exist at the present time. **(Insert one of the paragraphs below.)**

{However, we anticipate that we may be able to provide you with the records by **(specify a date)**. We will advise you when this material becomes available.}

{However, we anticipate that the records may be available after **(specify a date)**. You may wish to resubmit your request at that time.}

In accordance with the Department of the Interior's regulations (43 CFR 2.14(c)), the requirement that records be made available to the public only applies to records in existence at the time the request is made. It imposes no obligation on the Department of the Interior to place the requester's name on a mailing list for automatic receipt of certain kinds of records as they become available.

Under 43 CFR 2.18, you may appeal this response by writing to:

Freedom of Information Act Appeals Officer
Office of Information Resources Management
US Department of the Interior
MS-5312, MIB
1849 C Street NW
Washington DC 20240-0001

Your appeal must be received no later than 20 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM

OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you.

Should you desire any additional information, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 14
CONSULTATION WITH THE SUBMITTER
(AGENCY REQUESTING OPINION OF SUBMITTER)

LC-5301
IRM-6.11
(RO-9914)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Bea Good
Perry Corporation
5678 Market Street
Richland VA 01010

Subject: Freedom of Information Act (FOIA) Request for Copies of
(subject of records)

Dear Ms. Good:

Pursuant to the FOIA (5 U.S.C. 552), **(name of company or individual requesting record)**, has requested a copy of subject documents **(copy of the letter is enclosed)**.

To assist us in determining whether data should be released, we need your firm's views on which items, if any, are protected from disclosure by exemption 4 (5 U.S.C. 552(b)(4)). If you recommend that information be withheld, please provide us with the following:

- (1) The data to be withheld and the basis on which the information is exempt under the FOIA;
- (2) A detailed explanation of how disclosure would be competitively harmful to your company; and
- (3) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

Please review all the materials that were submitted with your proposal and submit any recommendations you may have concerning disclosure of the information within 10 days from the date of receipt of this letter. If you have any questions regarding this matter, contact **(name, title and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

Enclosure

SAMPLE LETTER 15
NOTIFYING SUBMITTER OF AGENCY'S INTENT
TO RELEASE DOCUMENTS

LC-5301
RIM-6.11
(RO-9915)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Bea Good
Perry Corporation
5678 Market Street
Richland VA 01010

Subject: Notice of Intent to Release Records Under the Freedom of Information Act (FOIA)

Dear Ms. Good:

Thank you for your letter of January 19, 19XX, in which you objected to our disclosure of Perry Corporation's contract proposal and related correspondence for contract No. 00000.

After considering your comments, and thoroughly reviewing your proposal and the related correspondence, we plan on releasing the following information for the reasons discussed below.

1. Unit Prices - Disclosure of the unit prices is consistent with the fundamental purpose of the FOIA--to ensure public access to Government records. Adequate information enables the public to evaluate the wisdom and efficiency of Federal programs and expenditures. To sufficiently evaluate the cost efficiency to the Government of this contract, unit prices must be disclosed. In addition, the Federal Acquisition Regulation (FAR) 15.1001(c) states that, with limited exceptions, the contracting officer must notify the unsuccessful offerors of unit prices of each award. Further, the disclosure of prices charged the Government is the cost of doing business with the Government and, as such, is a matter of public record. Finally, disclosure is consistent with current case law.

2. Name of the President/CEO of the Company - Since Perry Corporation is a publicly-owned company, this information is published in the company's annual report. Therefore, since it is already a matter of public record, we feel that the information is releasable under the FOIA.

3. Government Contracts and Information Available to the Public - The list of Government contracts previously awarded to the company, various sales brochures, and the annual report are a matter of public record, and thus releasable under the FOIA.

We do not believe that release of this information will reveal confidential commercial or financial information or cause Perry Corporation substantial competitive harm.

We plan to release this information (copies enclosed) to the requester 10 workdays from your receipt of this letter.

Sincerely,

(Office Director/Area Office
Manager, or Designee)

Enclosures

SAMPLE LETTER 16
RESPONSE TO REQUESTER - RELEASE OVER OBJECTION
OF SUBMITTER - RELEASE OF DOCUMENTS DELAYED

LC-5301
RIM-6.11
(RO-9916)

Mr. James Sullivan
Ally Corporation
10 North Chestnut Street
Newark NJ 00000

Subject: Freedom of Information Act (FOIA) Request for Records Concerning Perry Corporation

Dear Mr. Sullivan:

This letter is in response to your FOIA request of **(date of request)**, in which you seek access to subject records. The requested information is enclosed except as follows:

1. Information concerning the qualifications, skills, educational background, and past experience of the company's employees. Release of this data could encourage corporate raiding and would be detrimental to the internal operations and productivity of the company (Items 1-10).
2. Cost and financial data and the competitive pricing approaches of the contractor. Release of this information would reveal the contractor's internal operations and business practices, thereby diminishing its competitive abilities. In addition, release could render future negotiations difficult if offerors become reluctant to furnish such information for fear of disclosure by the Government (Items 20-30).
3. Certain technical and commercial data describing the company's equipment, internal operating procedures, the names and telephone numbers, and other information concerning its non-Government clients for the same reasons cited above (Items 41-50). The fourth exemption under the FOIA protects from mandatory disclosure ". . . matters that are commercial or financial information obtained from a person and privileged or confidential." It is designed to protect the interests of both the Government and the submitter of the information. The test for determining whether commercial or financial information is confidential is dependent upon whether disclosure is likely to have either of two effects: (1) impair the ability of the Government to obtain information in the future, or (2) cause substantial competitive harm to the submitter of the information. Therefore, we believe sound grounds exist for withholding the above information pursuant to exemption 4 of the FOIA (5 U.S.C. 552(b)(4)).

You are advised that the submitter (Perry Corporation) has objected to the release of some of the information contained in its contract. However, after a thorough review, we have decided to disclose some of this data. It will be released no sooner than 10 workdays from Perry's receipt of our determination to disclose the information.

As Regional Director, I am responsible for this partial denial. **(Name)**, Attorney, Office of the Field Solicitor, was consulted with respect to this denial.

Under 43 CFR 2.18 you have the right to appeal this decision to:

Freedom of Information Act Appeals Officer
Office of Information Resources Management
US Department of the Interior
MS-5312, MIB
1849 C Street NW
Washington DC 20240-0001

Your appeal must be in writing and must be received no later than 20 workdays after the date of this letter or 20 workdays after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

The fee incurred in processing your request was minimal and is waived.

If you have any questions regarding this matter, contact **(insert name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

Regional Director

Enclosures

SAMPLE LETTER 17
INTERIM RESPONSE - DELAY IN PROCESSING REQUEST

LC-5301
RIM-6.10
(RO-9917)

Mrs. Jane Doe
001 Capital Street, S.E.
Washington DC 20002

Subject: Freedom of Information Act (FOIA) Request for
(subject of records)

Dear Mrs. Doe:

This letter is in response to your FOIA request of **(date of request)**, regarding the subject records.

Select the appropriate paragraph(s) below:

{Because of the voluminous nature of your request, additional time is necessary to enable us to determine which records or portions thereof may be released. Accordingly, we anticipate a delay in providing you with our final response.}

{The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.}

{The **(name of office processing the request)** is unable to respond to your request within the time limits established by the FOIA due to a backlog of requests and other unforeseen circumstances. Please be assured, however, that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date. All requests are handled in chronological order based upon the date of receipt.}

{The records you requested are located at three of our field installations and at headquarters. The **(name of responsible office)** in Washington, D.C., will be coordinating the response since it has jurisdiction over these records. As a result, additional time is needed to search for, collect, and review the material.}

{In accordance with 43 CFR 2.15(d), the Department of the Interior is required to notify submitters of commercial and financial information when it receives an FOIA request for records they have submitted to the Government. Two of the submitters we contacted with regard to your request have taken longer than anticipated to review their material. We expect to hear from them by **(estimated date)** and a decision on your request will be forthcoming.}

We expect to complete its response to you by **(specify date)**.

You have a right to treat this delay as a denial of your request. You may appeal this matter by writing to:

Freedom of Information Act Appeals Officer
Office of Information Resources Management
US Department of the Interior
MS-5312, MIB
1849 C Street NW
Washington DC 20240-0001

A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and it must be received no later than 20 workdays after the date of this letter. We hope, however, that you will defer action until a decision has been reached on your initial request.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 18
ADVANCE PAYMENT - FEES OVER \$250

LC-5301
RIM-6.10
(RO-9018)

Mr. Walter Plank
Mid-Atlantic Oceanography
1989 Boardwalk Lane
Ocean View DE 19810

Subject: Freedom of Information Act (FOIA) Request Concerning the Alameda Oil Spill

Dear Mr. Plank:

This letter is in response to your (FOIA) request of **(date of request)**, concerning the subject records.

Our initial estimate is that fees for us to process your request will be \$29,275, calculated as follows:

\$13,000 for duplication - 100,000 pages at \$.13 per page

\$16,275 for search and review time - 875 hours at \$18.60 per hour

Assuming you are still interested in obtaining these documents, please send a check or money order made payable to the Bureau of Reclamation to **(name of office), (address where payment is to be mailed)**.

If complying with your request exceeds the total estimated above, you will be billed, and if the cost is less, the difference will be refunded to you. You may wish to modify your request to reduce the fee at this time. In accordance with our regulations (43 CFR 2.20(h)), we will not begin processing your request until payment is received.

If you have any questions, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area Office
Manager, or Designee)

SAMPLE LETTER 19
DETERMINING CATEGORY OF REQUESTER

LC-5301
RIM-6.10
(RO-9919)

Ms. Deanie Writ
P.O. Box 777
Winton MN 55796

Subject: Freedom of Information Act (FOIA) Request for Copies of
(subject of records)

Dear Ms. Writ:

This is in response to your FOIA request of **(date of request)**, concerning the subject records.

In your letter you stated that you were an author and that you were doing research for a new book on the Cimarron Strip. However, you did not provide sufficient evidence for us to make a determination as to whether you qualify as a "freelance journalist" under our regulations (see 43 CFR 2.20(d)(3)(ii)). Have you published anything previously? Are you affiliated with any publishing house? Do you have a contract with a specific publisher for your book?

In accordance with our regulations (43 CFR 2.20(f)), we will not proceed further with your request until we hear from you. If you have any questions regarding this matter, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

SAMPLE LETTER 20
FEE WAIVER CLARIFICATION

LC-5302
RIM-6.10
(RO-9920)

Mrs. James Manning
Manning and Manning
Attorneys at Law
One Market Street
Hampton VA 23662

Subject: Freedom of Information Act (FOIA) Request of Copies of Records Relating to
(subject of records)

Dear Mrs. Manning:

This is in response to your FOIA request of **(date of letter)**, in which you seek access to the subject records.

In your letter you also sought a fee waiver, however, you did not provide us with any justification as to why disclosure of the requested documents would be in the public interest. The Department of the Interior's regulations state that ". . . documents shall be furnished without charge . . . if disclosure of the information is in the public interest because it (1) is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) is not primarily in the commercial interest of the requester" (43 CFR 2.21(a)). We do not see how disclosure of the contract schedules and drawings would meet these criteria.

Our initial estimate is that fees for us to process your request will be \$000.00 (0,000 pages of duplication at \$.13 per page and 1 hour of professional search and review time at \$18.60). If you still wish to obtain these documents, please either explain why you feel disclosure is in the public interest, or provide us with your written assurance of payment for the amount specified above.

Also, you may wish to modify your request at this time to reduce the fee. We will not proceed further with your request until we hear from you.

If you have any questions, please contact **(name, title, and telephone number of FOIA Coordinator)**.

Sincerely,

(Regional FOIA Coordinator/Area
Office Manager, or Designee)

APPENDIX C: Forms Used in Processing FOIA Requests

- 1. LC-71, FOI/PA Requests Processing Log**
- 2. LC-2, FOIA Request for Records**
- 3. LC-4, FOI Processing Cost Worksheet**
- 4. "Routing" Folder Cover Sheet**